IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

MFA.No. 1072 of 2001(B)

OPMV.361/1995 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
.....

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO. LTD., REP.
BY ITS ASSISTANT ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, 3RD FLOOR, KANDAMKULATHY
TOWERS, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS/CLAIMANT AND RESPONDENTS 1 AND 2:

1.C.A.SULAIMAN,S/O.LATE SRI.AHAMED,
XXXIII/1583,CHANEPARAMBIL HOUSE,
VENNALA, KOCHI - 28.

2.RONY,S/O.A.A.PIOUS,VENNALA P.O.,
KOCHI-28.

3.A.A.PIOUS,ADAPPILLY HOUSE, VANNALA P.O.,
KOCHI-28.

BY ADV. SMT.M.A.VAHEEDA BABU FOR R1
SRI.M.A.ABDUL HAKHIM
SRI.RANJIT BABU FOR R2 AND R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1072 OF 2001 (B)

Dated this the 23rd day of May, 2007

J U D G M E N T

KOSHY,J.

Insurance company filed this appeal against the award of the Motor Accidents Claims Tribunal, Ernakulam in awarding compensation of Rs.66,000/- with interest from the date of this application. First respondent at the age of 24 met with a motor accident in which he suffered serious injuries. Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the appellant Insurance company. The total compensation claimed was Rs.2,00,000/-. As per Ext.A5 wound certificate claimant suffered the following injuries:

1) Closed fracture of shaft of left femur.
2) Contusion on the left hip and
3) Contusion/abrasion on the left knee.

He was admitted in the hospital on 6.6.1994 and discharged on 24.6.1994. Ext.A6 treatment certificate shows that open reduction and nail fixation were done and he has permanent disability of 10%. Ext.A7 is the discharge certificate. Doctor certified that he has difficulty in squatting. Medical certificate showing 10% disability was accepted by the Tribunal. Since there is a fracture of left femur we see no ground to interfere in the above findings. An open reduction surgery was done for the nail fixation. It is submitted by the counsel for the respondents that after the award, another operation was conducted to remove the nail. Tribunal has taken only Rs.1,500/- as the notional income even though it was claimed by the petitioner that he was a whole sale merchant of arecanut and betel leaves. It is true that for disfigurement Rs.5,000/- was awarded by the tribunal and for shortened expectation of life due to loss of health Rs.10,000/- was awarded. But Tribunal awarded compensation for permanent disability and loss of earning power by applying multiplier of 10. If the second schedule was taken as a guideline, multiplier was 17 as the age of the claimant at the time of accident was

24. If that was taken claimant would have been entitled to more amount even if the amount awarded for disfigurement and loss of expectation of health are deducted. Considering the total amount of compensation awarded and considering the nature of injuries and treatment expenses incurred by the petitioner, we are of the view that no interference is required in the award. However, we note that tribunal has awarded 12% interest and we reduce it to 9% from the date of accident till deposit. With the above modification this appeal is disposed of.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1072 OF 2001 (B)

J U D G M E N T

23rd May, 2007